

**Inner City Press**  
**Community on the Move**  
&  
**Inner City Public Interest Law Project**

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March 26, 1998

**VIA FEDERAL EXPRESS**

Federal Communications Commission  
Attn: Magalie Roman Salas  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Attached Petition to Deny Applications of SBC  
Communications Inc. and Southern New England  
Telecommunications Corp. to Transfer Control of  
SNET to SBC (CC Docket No. 98-25)

Dear Secretary Salas:

On behalf of Inner City Press/Community on the Move and its members and affiliates, including the Inner City Public Interest Law Project ("ICP"), attached please find a timely petition to deny the above-captioned Applications. For the reasons set forth in the attached, the Applications should be denied.

An original and twelve (12) copies of the petition to deny are enclosed for filing. Copies of the petition to deny have also been mailed as specified in the Commission's public notice of February 25, 1998. ICP is also providing a courtesy copy of this petition to deny to the SBC counsel who sent a copy of the Application to ICP. Please date-stamp the enclosed extra copy of the petition to deny and return it in the self-addressed stamped envelope provided herein.

If you or any staff member of the Commission have any questions, please do not hesitate to telephone me at ICP's offices, at (718) 716-3540.

Very Truly Yours,  
*Matthew Lee*  
Matthew Lee  
Executive Director

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Applications of SBC Communications Inc. and ) CC Docket  
Southern New England Telecommunications Corp.) No. 98-25  
to Transfer Control of SNET to SBC )

Petition to Deny

filed by

Inner City Press/Community on the Move  
& Inner City Public Interest Law Project

March 27, 1998

Matthew R. Lee, Esq.  
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& Inner City Public Interest Law Project  
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On behalf of Inner City Press/Community on the Move and its members and affiliates, and the Inner City Public Interest Law Project (collectively, "ICP"), a consumers' organization headquartered in the Bronx, New York, with members in Connecticut and other states, this is a petition to deny the Applications of SBC Communications Inc. ("SBC") and Southern New England Telecommunications Corporation ("SNET") to transfer of control of SNET to SBC.

The bases of this petition to deny are as follows:  
SBC, of ALL of the Regional Bell Operating Companies ("RBOCs"), has been the most resistant to opening up its local monopolies to competition. Here, it seeks approval to acquire another Incumbent Local Exchange Carrier ("ILEC"), SNET. Not only should SBC, based on its record (further

described *infra*) not be allowed to acquire another ILEC -- the proposed acquisition, on the current record, would not serve the public interest, because SBC would foreseeably impose its anti-consumer, anti-competition policies and practices in all the markets served by SNET.

Furthermore, despite SBC's arguments to the contrary, there are competitive issues that must be inquired into in this proceeding.

See, e.g., SNET Still Dominates... Still Controls 99% of Local Phone Lines,<sup>1</sup> Boston Globe, January 21, 1998, at D1: "Some analysts say SBC is taking a back-door approach to getting in the long-distance business by purchasing SNET... Would federal regulators frown upon a combined SBC/SNET offering long distance services? SBC Chairman Edward Whiteacre doesn't think so. 'SNET would be outside SBC's (traditional) region,' he said."

ICP as a consumers' organization hereby timely opposes SBC being allowed to offer long distance services, particularly given its blatantly resistance to opening "its" markets to competition, reviewed in detail *infra*.

See also the Hartford Courant of January 7, 1998: "one aspect of this acquisition deserves particular review by regulators. As a non-Bell telephone company, SNET has been allowed to sell long-distance service. SBC and the four other Bell companies, however, have been blocked by federal regulators from getting into the long-distance business until they open their own markets to full competition. SBC may use SNET to get into long-distance service, unless

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<sup>1</sup> Here's an estimate of current "harm": "the resulting lack of local competition in Connecticut and elsewhere has hurt consumers, costing ratepayers about \$10 billion a year nationally."

regulators require that the parent company open its markets to full competition." Emphasis added.

SBC should not be allowed to use SNET for any end-run around the public interest requirements it has been litigating against and evading for two years (and more) now. SBC's activities in "its" existing markets are entirely relevant to, and must be acted on in, this proceeding.

Furthermore, note that SNET has been sued for questionable use of the "PIC freeze" anti-slamming software. Two long distance companies have alleged that SNET, as the dominant local carrier which also sells long distance service (and controls 40% of the Connecticut long distance market) "manipulated customers to its own benefit." Hartford Courant, June 6, 1997.

A detailed recent review of SBC's practices, that ICP is asking be incorporated in full into the record in this proceeding, is Stall Tactics: SBC Illustrates How RBOCs Are Thwarting Competition, Network World, December 8, 1997, at 1. This study is significant because it involved interviews with a cross-section of CLECs, long-distance providers, regulators and industry analysts.<sup>2</sup> Portions follow (to ensure their timely entry into the record):

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<sup>2</sup> See also, InternetWeek of January 12, 1998, quoting Christine Heckart, an analyst at TeleChoice, Inc. "that SBC has been one of the most bureaucratic and least innovative of the regional Bell operating companies, and has consistently used the courts to keep competitors out of its regions. Heckart blamed the FCC for allowing the Bell companies to acquire other local exchanges. She said the consolidations will frustrate attempts to open the market to competition and new services, especially new data services."

"The litany of CLEC accusations against SBC... include refusal to honor signed interconnection agreements, pulling circuits off the market to prevent Internet service providers from testing high-speed data lines, and threatening legal action to frighten users from doing business with competitors. CLECs have at least some of these problems with all RBOCs, but it is SBC that angers them most. 'SBC is an order of magnitude harder to get an interconnection agreement with than any other Bell,' says Martin McDermott, senior vice president of marketing for American Communications Services, Inc., a CLEC in Annapolis Junction, Md.<sup>3</sup> 'Their attitude is "Let them eat cake. We're not going to do anything we don't have to do.'"...

"The legal hurdles SBC puts in front of would-be competitors are perhaps the most daunting, CLECs say... Last year in Texas, for example, after SBC-CLEC negotiations for interconnection agreements broke down, the state PUC arbitrated interconnection agreements. SBC signed these arbitration agreements -- typically taken as a sign that a party agrees to the terms. But SBC ignored PUC orders to file related tariffs, then appealed the agreements altogether, according to lawyers still arguing the cases.<sup>4</sup> Because of such maneuvering, in Texas alone, CLECs are spending hundreds of thousands of dollars each, at the most conservative estimates, to finalize SBC interconnection agreements...

"Despite repeated requests over a nearly two-month period, SBC would not say how many cases it has filed in state courts in all the states in which it operates.<sup>5</sup>

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<sup>3</sup> ICP note: Mr. McDermott and others quoted herein should be contacted / interviewed by the FCC, and/or testify at the hearing ICP is timely requesting on this Application.

<sup>4</sup> See ICP footnote immediately above.

<sup>5</sup> **ICP NOTE: This information, relevant to assessing the foreseeable effects on the communities and consumers served**

"But the obstacles SBC creates are not just legal, the CLECs say. One reason interconnection agreements had to be arbitrated in the first place was because of the tariffs SBC wanted to charge for unbundled network elements, physical colocation setups and lines for resale.

"'Fifty thousand dollars is high but in line for physical colocation, but SBC wanted half a million dollars for a 10-by-10 foot space,' says Manning Lee...[of] a competitive carrier in Staten Island, N.Y. By comparison, NYNEX Corp., now merged with Bell Atlantic Corp., was charging \$50,000, and Rochester Telephone Co. in upstate New York was charging \$10,000. That SBC even attempted to charge 10 times more than NYNEX, which serves areas with some of the highest rents in the country, is simply absurd, some CLECs charge...<sup>6</sup>

"IoNet, Inc. offers Internet services in Oklahoma, an SBC state, and was interested in offering access via digital subscriber line (DSL) links. But SBC refused to let IoNet test SBC-provided burglar alarms and local-area data service

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**by SNET if SBC is allowed to acquire SNET, should be disclosed in this proceeding, either by direct FCC request, or by allowing ICP to conduct pre-hearing discovery. See *infra*.**

<sup>6</sup> ICP NOTE: these tactics are not an isolated incident at SBC. See, e.g., C. Palmeri, My Partner, Your Landlord, *Forbes*, May 20, 1996, at 104: "In Dallas MTS set its rates at least 8% below those charged by SBC... SBC initially tried to stop the alternative providers in court. When that failed, SBC tried charging its competitors \$9.25 per number per month to list their customers in Southwestern Bell's phone book, a service it usually offers for free... Southwestern Bell has not responded by offering one time commissions averaging \$35 per customer to apartment managers who agree not to bring in competing telephone providers." While this might be a windfall for apartment managers and owners, it is NOT the time of benefit Congress intended in the 1996 Act. The FCC should inquire into these publicly-reported SBC practices, and, on the current record, this Application should be denied.

(LADS) circuits, which can support DSL, says Leonard Conn, president of IoNet. 'SBC is not prepared to deliver DSL access to the Internet, so they're making sure no one else can either," Conn says..."

The above contains specific charges that SBC should be required to answer in this proceeding, and makes out a showing of the type of practices SBC would impose of SNET and the communities and customers SNET currently serves. This Application should be denied.

SBC's Application claims that SNET will continue to run itself, only receiving financial resources but apparently not strategic advice or directives from, SBC. This is not credible. See, for example, a recent study of the effects and aftermath of SBC's acquisition of Pacific Telesis: "A year after it merged with SBC[, PacTel's] senior management has been replaced, two-thirds of its top executive have left and major operations have been scrapped... 'What we found is that while SBC and Pacific Telesis talked about a merger of equals before the deal in 1997, it has proven to be a complete takeover'... PactTel Ventures, the operation spearheading PacTel's futuristic push into video, cable and fiber-optic ventures, has been shuttered..."

The first of these reports can be found at:  
<http://www.amcity.com/sanfransisco/stories/032398/story1.html>

Two further reports will follow at that site, on March 27 and April 3, 1998, and should be incorporated into the record in this proceeding, and inquired into by the FCC, including as the best way to assess the foreseeable effects of allowing SBC to acquire SNET, based on SBC's practices

after its acquisition of another "out-of-market" ILEC one year ago.

See also, Telephony of January 12, 1998: "perhaps it's also time that the industry started asking itself in whose best interest this rush to merge is. Despite pronouncements by executives, it's not the consumer. One of the intentions of the telecom act was to foster competition in video, data and voice services on the local level... SBC said consumers would be the biggest benefactors of its merger with Pacific Telesis. A few months later, the company shuttered its fledgling video operations in San Jose and Richardson, Texas. It's also a poorly kept secret among [CLECs] that SBC is one of the most difficult telcos to work with when it comes to negotiating interconnection."

The effect SBC has on ILECs it acquires, and the communities they (used to) serve, is further reflected by the fact that, in April 1997, the California PUC gave PacTel interim approval for interconnection tariffs. "In August 1997, before the PUC could give final approval to the tariffs and services, including terms for the physical colocation of competitors' switches in its facilities, the company [now owned by SBC] withdrew its filing." SBC Illustrates How RBOCs Are Thwarting Competition, *supra*.

Given SBC's record, and the lack of any commitments to the contrary in the Application, SBC's proposed acquisition of SNET would not be in the public interest.<sup>7</sup> Approval of

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<sup>7</sup> Note that Connecticut communities, particularly low and moderate income communities of color, are already suffering the effects of anticompetitive acquisitions of locally-based institutions, such as First Union Corporation's acquisition of First Fidelity and CenterBank, both of which ICP and its Connecticut members and affiliates opposed. For the record, ICP's point is not the distance to the headquarters (whether



this merger, as proposed, would not secure for, but would rather deny to "the public the broad aims of the Communications Act." Western Union Division, Commercial Telegraphers' Union, A.F. of L. v. United States, 87 F.Supp. 324, 335 (D.C.C.), *aff'd*, 338 U.S. 864 (1949). Expedited treatment of the applications would be inappropriate; the Applications should be amended or supplemented, and/or a hearing (which ICP is requesting) should be held on these issues. As currently proposed, this merger should be denied.

Further note (if necessary) that there ARE competition-related issues which must be explored in this proceeding: see, e.g., Communications Daily of February 19, 1998, AT&T Challenges RHC Arguments That Conn. Market Benefits From Competition: AT&T released study Tuesday that disputes Bell company arguments that Southern New England Telephone (SNET) long distance entry had produced lower prices and increased competition in Conn. and should be model for nation. [AT&T's] analysis by Lee Selwyn, of Economics & Technology, Boston, found SNET rates were identical to long distance carriers, and competition still was hindered by SNET control of market and lax regulatory policies. Selwyn said: 'Rather than demonstrate any durable competitive benefit... the "Connecticut Experience" teaches volumes about the dangers of premature BOC long distance entry before local competition is given a chance to take root."

See also, Consolidation in the Yellow Pages Industry Continues with SBC Acquisition of SNET, Yellow Pages &

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in San Antonio or Charlotte, N.C.) -- rather, it is the foreseeable effects of acquisition by SBC WITH ITS RECORD (see *supra*).

Directory Report, January 14, 1998: "SNET Publishing... publishes 47 directories with 4.5 million circulation. SBC... publishes over 450 directories with nearly 80 million circulation."

THIS PROPOSED MERGER WOULD **NOT**  
"PRESERV[E] AND ENHANC[E] UNIVERSAL SERVICE"

For the reasons set forth above, and otherwise, this proposal does not pass one of the essential prongs of the FCC's current public interest test: that proposed transfers of licenses and mergers such as this "preserv[e] and enhanc[e] universal service." See *supra*.

As sketched above (ICP is under no duty to, and in fact cannot, plead with greater specificity, given the lack of detail, or more precisely of candor about SBC's plans for SNET, in light of SBC's actions on PacTel, see *supra*, in SBC's application), this proposal runs afoul of, and is inconsistent with, the 1996 Act, and one of its major focii: universal service.

This proposed merger would not preserve much less enhance the principles of universal service. On this ground, either the Applications should be amended or supplemented, a hearing should be held, or the Applications should be denied.

Procedural Posture/ICP's Request for Information from SBC

On February 27, 1998, the Federal Communications Commission (the "FCC" or the "Commission") issued a public notice of SBC's applications to acquire SNET and its licensed and authorizations, and setting the deadline for the filing of petitions to deny and/or comments as March 30,

1998. This petition to deny, which is being sent to the Secretary of the FCC by Federal Express on March 26, 1998, is timely.<sup>8</sup> While the FCC's February 27, 1998, public notice did not specify a deadline for reply comments, ICP hereby informs the Commission of its intent and desire to file a reply to whatever opposition or response the Applicants may file, within two weeks of April 29, 1998.

Also note that ICP raised some of these issues (stating, e.g., "if SBC has been close to open its existing monopolies up to competition, why should it be allowed to acquire another incumbent local monopoly"?) to SBC in a letter dated March 2, 1998. SBC responded by letter dated March 6, 1998, which letter did not even mention, much less respond, to the question quoted above, and refused to provide ICP with a copy of the Application, rather "refer[ring ICP] to the Internet cites [sic] for agencies... <http://www.fcc.gov> from which you should be able to download the applications (or portions that you want)." After further phone calls to SBC, ICP received a copy of a portion of the Application, and, after review, finds that the Application does NOT demonstrate, much less "convincingly," that this acquisition would be in the public interest. Thus, ICP files this timely petition to deny / request to dismiss the Application or schedule a hearing thereon.

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<sup>8</sup> ICP is also providing a courtesy copy of this petition to deny to the SBC representative who initially declined to send ICP a copy of the Application (see Exhibit A hereto), and then, after a phone message, send portion of the Application, without cover letter. ICP is also faxing a courtesy copy of this petition to deny to the FCC at fax number (202) 418-2345. This petition to deny is timely.

## CONCLUSION

For the foregoing reasons, SBC's applications, and this proposed combination, should be denied by the Commission.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Matthew Lee, do hereby certify that true and correct copies of the foregoing Petition to Deny were sent by first-class, postage prepaid mail, this 26th day of March, 1998, to the following:

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